IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO.203 OF 2005
IN
WRIT PETITION NO.2533 OF 1998

Vidya Sharad Urankar .... Petitioner
Vs.
The Special land Acquisition Officer, MHADA & Ors. .... Respondents

Shri P.J. Coutinho for the Petitioner.

Shri G.W. Mattos, AGP, for the Respondents.

CORAM: R.M.S. KHANDEPARKAR &
V.M. KANADE, JJ.

DATED: OCTOBER 04, 2005

P.C:

1. Heard. By the present chamber summons the petitioner seeks to amend the petition by incorporating the prayer clauses (p)1 and (p)2 as under:-

> "(p)1. This Honourable Court order and direct the Petitioner to deposit in this Honourable Court the amount of Rs.89 lakhs being the reconstruction costs of the building known as 'Chatriwala Chawl' within a period of 12 weeks from the date of the Order and on the date of deposit made by the Petitioner-landlord the Respondents Nos.1 and 2 be ordered and directed to handover possession of

the suit land and building to the Petitioner-landlord.

(p)2. The Respondents be ordered and directed to pay the Petitioner-landlord the sum of Rs.3 crores, being the value of the suit building and plot, within a period of 6 weeks of disposal of the Petition."

The learned Advocate appearing for the petitioner submitted that necessary factual foundation has been laid down to seek such relief in para 60 of the petition. The para 60 of the petition reads thus:-

"Any law which imposes excessive restriction on the fundamental rights of the citizens is unreasonable law. The Court is entitled to examine whether the same object could have been achieved by lesser restrictions. If the Court is entitled to strike down the law on the ground that Legislature has imposed excessive restrictions, then the Court is naturally entitled to examine whether the same objective could have been achieved by imposition of lesser restrictions. Law is relating to

> acquisition of property and not confiscation of property. If illusory compensation is paid to the landlord in consideration of acquired land and building it amounts to confiscation of land and building. At one stage, the law was that landlord must be paid just equivalent of market value of acquired property. After amendment of Article 31 of Constitution of India, the law was to the effect that amount paid for acquisition of property need not be just equivalent. If inadequate amount is paid, acquisition would not be bad. Court was precluded from going into adequacy of amount paid as compensation. Article 31 of Constitution of India is deleted and therefore even restriction imposed upon Court to examine adequacy of compensation is also removed. Hence, Court and quasi-judicial authority can go into question of adequacy or inadequacy of compensation paid."

2. Bare perusal of para 60 of the petition would disclose that apart from contending that there is illusory compensation paid to the landlord, no factual data required to claim compensation to the extent of

Rs.3 crores or for deposit of Rs.89 lakhs has been disclosed in para 60 of the petition. Apart from para 60, in no other para of the petition we find any fact being disclosed to justify the claim for compensation to the tune of Rs.3 crores or for direction to deposit Rs.89 lakhs, sought to be introduced by way of amendment.

3. It is settled principle that amendment is to be allowed when the same is necessary to decide the real question in controversy. Once the facts stated in the petition nowhere disclose the basis to claim compensation at the rate of Rs.3 crores or for direction to deposit sum of Rs.89 lakhs, the question of allowing the petitioner to introduce the prayers for such claim does not arise and hence the prayer for amendment cannot be granted and for the same reason the chamber summons needs to be dismissed and is accordingly hereby dismissed. There shall be no order as to costs.

(V.M. Kanade, J.) **(R.M.S. Khandeparkar, J.)**